

AUG 22 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON

U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRIEDA GILL,

Plaintiff - Appellant,

v.

JO ANNE B. BARNHART, Commissioner,
Commissioner of Social Security
Administration,

Defendant - Appellee.

No. 02-57170

D.C. No. CV-02-03244-DT/CT

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Submitted April 30, 2003**

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, appellant's request for oral argument is denied.

Frieda Gill appeals from the district court's judgment in favor of the Commissioner of the Social Security Administration, holding that substantial evidence supported the conclusion that Gill was not entitled to widows' benefits. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Gill seeks to estop the Commissioner from offsetting her widow's benefits based on her government pension. Estoppel may not be used against the government as a basis for money claims. See United States v. Hatcher, 922 F.2d 1402, 1410 (9th Cir. 1991). Even if a money claim were not involved, estoppel against the government applies only when the person invoking estoppel establishes "affirmative conduct going beyond mere negligence." Id. (quotations omitted). Substantial evidence supports the conclusion that the misinformation Gill received resulted from negligence, not affirmative misconduct.

AFFIRMED.